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PREVENTION OF DISCRIMINATION AGAINST AND THE PROTECTION OF MINORITIES

Report of the Working Group on Minorities on its fourth session

(Geneva, 25-29 May 1998)

Chairman-Rapporteur: Mr. Asbjørn Eide

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Introduction

1. The creation of the Working Group on Minorities was recommended by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 1994/4 of 19 August 1994, authorized by the Commission on Human Rights in its resolution 1995/24 of 3 March 1995, and endorsed by the Economic and Social Council in its resolution 1995/31 of 25 July 1995.

2. In that resolution the Council authorized the Sub-Commission to establish, initially for a three-year period, an inter-sessional working group consisting of five of its members to meet each year for five working days in order to promote the rights of persons belonging to national or ethnic, religious and linguistic minorities, as set out in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities. In its resolution 1998/19, the Commission on Human Rights decided "to extend the mandate of the Working Group with a view to its holding one session of five working days annually". In accordance with its initial mandate, the Working Group has been entrusted to:

(a) Review the promotion and practical realization of the Declaration;

(b) Examine possible solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and Governments;

(c) Recommend further measures, as appropriate, for the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities.

3. In compliance with the above-mentioned resolutions, the Working Group held 10 public meetings from 25 to 29 May 1998, including three closed sessions on 25, 27 and 29 May.

I. ORGANIZATION OF THE SESSION

A. Election of officers

4. At its 1st meeting, the Working Group re-elected Mr. Asbjørn Eide as Chairman-Rapporteur for a further two-year term.

B. Attendance

5. The session was attended by the following independent experts of the Sub-Commission as decided by the Sub-Commission at its forty-seventh session (decision 1995/119) and at its forty-ninth session (decision 1997/111): Mr. José Bengoa, Mr. Asbjørn Eide, Mr. Vladimir Kartashkin, Mr. Mustapha Mehedi and Mr. Soli Sorabjee.

6. The following States Members of the United Nations were represented by observers: Austria, Azerbaijan, Bahrain, Brazil, Bulgaria, Canada, Chile, China, Costa Rica, Croatia, Cuba, Estonia, Finland, Germany, Hungary, India, Japan, Kuwait, Lithuania, Malaysia, Norway, Pakistan, Peru, Philippines,

Poland, Romania, Russian Federation, Slovakia, Slovenia, Sri Lanka, Sweden, Turkey, the former Yugoslav Republic of Macedonia, Ukraine, United Kingdom of Great Britain and Northern Ireland, and Uruguay.

7. The following non-member States were represented by observers: Holy See, Switzerland.

8. The following United Nations bodies, specialized agencies and intergovernmental organizations were represented at the session: Office of the United Nations High Commissioner for Refugees, International Labour Organization, United Nations Educational, Scientific and Cultural Organization, World Health Organization, European Commission, Organization of the Islamic Conference.

9. The following non-governmental organizations in consultative status with the Economic and Social Council were represented by observers:

General

International Association of Soldiers for Peace, International Institute for Non-Aligned Studies.

Special

Arab Lawyers Union, Baha'i International Community, Federal Union of European Nationalities, General Arab Women Federation, Indian Movement "Tupaj Amaru", International Council of Jewish Women, International Federation of Human Rights Leagues, International League for the Rights and Liberation of Peoples, International Organization for the Elimination of All Forms of Racial Discrimination, International Service for Human Rights, Lutheran World Federation, North-South XXI, Summer Institute of Linguistics (United Kingdom of Great Britain and Northern Ireland), World Alliance of Young Men's Christian Associations, World Muslim Congress.

Roster

Caucasians United for Reparations and Emancipation, International Cremation Federation, Minority Rights Group.

10. The following other non-governmental organizations were represented by observers: Action for the Defence of Minorities (Cameroon), African Bureau of Educational Sciences, Arab Association for Human Rights (Israel), Asociación Proyecto Caribe (Costa Rica), Association des Assyro-Chaldéens de France, Association of Western Thrace Minority Graduates (Greece), Assyrian Universal Alliance (Australia), Awaz-E-Niswan (India), Bahrain Human Rights Organization (Denmark), Belfast Travelers' Education and Development Group (United Kingdom), Canadian-Egyptian Organization for Human Rights, Centre for Coordination of Non-Governmental Tribal Development Organizations (Thailand), Centre for Human, Civil and Autonomous Rights (Nicaragua), Centre for the Protection of Minorities and Against Racism and Discrimination in Bhutan (Nepal), Citizens' Constitutional Forum of Fiji, Chin National Council (India), Dalit Liberation Education Trust (India), Espacio Afroamericano, Ethiopian Women Lawyers' Association, European Roma Rights Center (Hungary),

European Centre for Minority Issues (Germany), Forum for Ethnic Relations (Yugoslavia), Foundation on Inter-Ethnic Relations (Netherlands), Groupement pour les droits des minorités (France), Human Rights Alliance (United States of America), Human Rights and Peace Centre (Uganda), Human Rights Defence Group (Cameroon), Human Rights Defence Group (German Chapter), High Commissioner Consultant for Minority Groups in San Andreas (Colombia), Ibn Khaldoun Center for Development Studies (Egypt), Indo-American Kashmir Forum (United States of America), Indo-Canadian Kashmir Forum (Canada), Indo-European Kashmir Forum (United Kingdom), International Centre for Ethnic Studies (Sri Lanka), Institut Suisse du Fédéralisme, International Lelio Basso Foundation for the Right and Liberation of Peoples (Italy), International Circassian Association (Russian Federation), International Organization for the Development of Freedom of Education, Kenyan Pastoralist Forum (Kenya), Kurdistan Reconstruction Organization (United Kingdom), Latvian Human Rights Committee, Legal Information Centre for Human Rights (Estonia), Ligua pro Europa (Romania), Macedonian Human Rights Movement of Canada, Macedonian Human Rights Movement in Greece, Maronite Community of Cyprus, Muttahida Quami Movement (United Kingdom), Movement for the Survival of the Ogoni People (Nigeria), Open Society Foundation (Romania), Open Society Foundation (Slovakia), Proceso de Comunidades Negras de Colombia, Project on Ethnic Relations (United States of America), Rainbow-European Movement (Greece), Research and Support of the Indigenous Peoples of the Crimea Foundation (Ukraine), Sasakawa Peace Foundation (Japan), Sikh Human Rights Group (United Kingdom), Soros Foundation (Romania), Sub-Carpathian Cultural Alliance of Hungarians (Ukraine), Transylvanian Society for Hungarians all over the World (Romania). Turkman Cooperation and Cultural Organization (Turkey), Union of Korean Teachers and School Clerks in Japan (Japan), Unrepresented Nations and Peoples Organization (Netherlands), World Federation of Hungarians (Hungary), Human Rights Committee - World wide Ahmadiyya Muslim Community (United Kingdom).

11. The following scholars participated in the meetings of the Working Group: Ms. Mylène Bidault, Ms. Monica Castelo, Mr. Edward Chaszar, Mr. Fernand de Varennes, Mr. Geoff Gilbert, Mr. Hurst Hannum, Mr. Yussuf Kly, Ms. Ellen Lutz, Mr. Silis Muhammed, Ms. Joanna Pfaff-Czarnecka, Ms. Margo Picken, Mr. Javaid Rehman, Mr. Eduardo Ruiz Vieytez, Mr. Thomas Simon and Mr. Henry Steiner.

C. Documentation

12. The documents before the Working Group are listed in annex II. All the working papers which were submitted are available from the secretariat.

D. Organization of work

13. At its 1st meeting, on 25 May 1998, the Working Group adopted the following agenda:

1. Adoption of the agenda.

2. Organization of work.

3. (a) Reviewing the promotion and practical realization of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;

(b) Examining possible solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and Governments;

(c) Recommending further measures, as appropriate, for the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities.

4. The future role of the Working Group.

5. Other matters.

14. In his opening statement, the Deputy High Commissioner for Human Rights recalled that the international community had established a wide range of mandates and procedures to implement minority-related human rights standards. The establishment of the Working Group on Minorities and the extension of its mandate on a permanent basis by the Commission on Human Rights at its fiftieth session was clear evidence of the commitment of the international community to address minority issues and to seek new avenues for the peaceful resolution of conflicts. He considered the Working Group as having dual functions - a process-generating function and a result-oriented function - both of which were crucial for the effective accomplishment of its mandate. He concluded by extending his cooperation in support of the activities of the Working Group and the implementation of its recommendations.

15. The Chairman-Rapporteur, in his statement, welcomed the three new members of the Working Group whose expertise and experience would prove most beneficial to the work and deliberations of its sessions. He recalled that the basis of the work of the Working Group was the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (thereafter "the Declaration") and that the Working Group consisted of an inner circle, the five experts of the Sub-Commission, and an outer circle including government observers, specialized agencies, minority representatives and scholars. The Working Group had developed a process of reflection, dialogue and search for improvements in minority-majority relations by way of the practical realization of the Declaration. An important task of the Working Group was to clarify the principles contained in the Declaration in order to better understand their content and scope. On the basis of information submitted to the Working Group on situations involving minorities, the Working Group could consider practical steps to realize the principles contained therein. At its previous sessions, the Working Group had addressed the educational rights of minorities, the role of the media in promoting intercultural understanding, effective participation of minorities and the role of the United Nations in protecting minorities. The Chairman-Rapporteur referred in particular to the holding, before the present session, of a successful seminar, organized by the International Service for Human Rights and the Minority Rights Group, on the role of the media in protecting minorities, as recommended by the Working Group at its third session. The Chairman-Rapporteur hoped that during the session, the Working

Group would advance the rights of minorities and thereby contribute to the stability of the States in which they lived. To that end he welcomed the contribution of the members and other participants to enable the Working Group to carry on its mandate effectively and arrive at useful and constructive recommendations for its future activities.

II. REVIEWING THE PROMOTION AND PRACTICAL REALIZATION OF THE DECLARATION ON THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

A. Introductory remarks

16. Mr. Bengoa observed that, with the renewal of its mandate on a permanent basis, the Working Group was facing new challenges. He referred to the need to understand the nature and causes of conflicts in the light of minority situations. The Working Group could make an important contribution to peace and the enjoyment of minority rights throughout the world by considering what preventive mechanisms might be established and action taken, in particular under the item of its mandate concerning possible solutions to problems involving minorities.

17. Mr. Mehedi mentioned that it was difficult at times to distinguish between vandalism and politically motivated internal conflict and that it was therefore unrealistic to expect dialogue and mutual understanding among groups in society, especially when one party to a conflict failed to respect the most fundamental values basic to even beginning such a dialogue. In view of this, Mr. Mehedi had some reservations about the Group focusing on mutual understanding between groups in society, as suggested by Mr. Bengoa.

18. Mr. Sorabjee stated that the Declaration would first have to be widely promoted before its principles could be realized in practice as many people, especially in the developing world, were unaware of its existence and content. The Declaration should be distributed and publicized, especially among decision makers, and Governments should be encouraged to translate it into the official and main minority languages, with the assistance of institutions such as the Minorities Commission in India and non-governmental organizations such as the Minority Rights Group. He suggested that it might be useful to issue a pocket version of the Declaration as part of the fiftieth anniversary celebration of the Universal Declaration of Human Rights.

19. Mr. Kartashkin suggested that the Working Group concentrate on two essential elements: theoretical reflection and practical implementation of the principles contained in the Declaration, on the basis of the proposals made during the sessions. The Working Group should address more concrete and practical questions, as it was most important to have a dialogue with States in which minorities lived. To that end, he suggested that the Working Group consider undertaking visits, by one or more members, to a particular State to investigate positive and negative practices. On that basis, the Working Group could make concrete proposals in order to better implement the principles contained in the Declaration. With a view to increasing the efficiency of their work, the members should be involved in a constructive dialogue with States and consider involvement with the relevant treaty-based bodies, including in-between the sessions of the Working Group.

20. The observer for Pakistan expressed the hope that the Working Group would continue to provide a forum for constructive dialogue between minorities and Governments rather than a forum for complaints.

21. The observer for Turkey stated that every country had a different cultural and historical background and he disagreed with the principle that objective criteria could be applied to the identification of minorities. It was therefore not up to the Working Group to "create" new minorities.

22. The observer for the Minority Rights Group reflected on ways to increase the effectiveness of the Working Group now that it had a permanent mandate. He suggested that the current support enjoyed by the Working Group and the growth in minority participation be used to best advantage, in particular to engage in constructive dialogue concerning, inter alia, country situations. He referred to ways in which the High Commissioner for Human Rights could further promote the rights of minorities within the framework of the activities of her office with other United Nations bodies, the role the Working Group could play with regard to the World Conference against Racism, and the activities and processes which could take place between the sessions of the Working Group. The observer for the International Service for Human Rights referred to a paper on the history and evolution of the Working Group entitled "The minorities have a forum at last". The observer stressed the importance of follow-up to recommendations and suggested that better use be made of other mechanisms such as the thematic and country rapporteurs. The observer for Switzerland added that the implementation of recommendations of its past session had proved invaluable for the credibility of the Working Group.

23. The observer for the International Centre for Ethnic Studies welcomed the recommendations contained in the report on the third session. He reiterated the importance of follow-up activities and the need to take stock of the status of the implementation of recommendations adopted at the last session. He noted that since the last session of the Working Group, several positive developments with regard to the resolution of long-standing conflicts involving minorities had taken place, such as the recent referendum in Northern Ireland and the agreement reached in Bangladesh. Many of the concepts and principles embodied in the Declaration were reflected in those accords, as well as new arrangements for participation and power-sharing. He urged the Working Group to focus more specifically on such developments and on ways by which they could be more meaningfully integrated into the work of the Working Group.

Commentary to the Declaration

24. Mr. Eide presented his working paper entitled "Commentary to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities" (E/CN.4/Sub.2/AC.5/1998/WP.1), which reflected his own understanding of the principles contained in the Declaration. The aims of the Declaration were intended to contribute to the realization of the principles of the United Nations including peace, territorial integrity, cooperation, the solution of common problems and the realization of international human rights instruments at the universal and regional levels. According to article 1 of the Declaration, not only was the

existence and identity of persons belonging to minorities to be protected, but the conditions for the promotion of that identity shall also be encouraged by States. This, he stated, reflected respect for pluralism and diversity in national societies while at the same time maintaining the identity and characteristics of minorities.

25. Mr. Sorabjee commended Mr. Eide for his excellent Commentary on the Declaration and suggested that the Working Group adopt a system of interpretative comments similar to those adopted by the Human Rights Committee. Such explanatory statements and guidelines would provide a better understanding of the content of and limits to the rights of minorities.

26. The observer for the International Service for Human Rights welcomed Mr. Sorabjee's proposal to elaborate interpretative comments on the articles of the Declaration, and recalled that the Working Group on Enforced or Involuntary Disappearances every year issued comments on one of the articles of the Declaration on the Protection of All Persons from Enforced Disappearance.

27. Mr. Kartashkin congratulated Mr. Eide on his excellent working paper. He observed that the Working Group should use the Declaration as the basis of its work but that further steps needed to be taken to ensure effective implementation of the principles contained therein. To that end, it was important to receive comments on each of the articles under consideration. With respect to article 1, he suggested that the relationship between assimilation and integration and the point at which integration became assimilation should be further considered. Different States viewed integration and assimilation in different ways and what could be considered integration of minorities by one State might be considered assimilation by another. Use of the State language and the question of citizenship were examples of indicators. It was important for minorities to be actively involved in all aspects of the national and public life of society in order to contribute to the overall political, economic and social development of the State. Mr. Kartashkin mentioned that dual nationality contributed to a reduction of tensions between minorities and the Government. He stressed the importance of bilateral treaties and especially of contacts between minorities across State borders. As for article 7, he suggested that information be submitted to the Working Group on regional mechanisms to promote and protect minorities. With regard to the right to self-determination, he recalled that there existed no international human rights instrument which provided for such a right, but that in certain cases, a minority could be granted the right to self-determination, subject to the agreement of the State concerned, in conditions of peace and full respect for human rights. He suggested that the Working Group focus both on theory and practice and that on the basis of the comments received on the Commentary the Working Group would be able to consider the further development of its work at its fifth session.

28. The observer for Lithuania disagreed that dual citizenship necessarily led to a reduction of tensions between groups in society. He added that the State language in conjunction with the use of minority languages was an indication of integration in society.

29. Mr. Bengoa stated that it was important to reflect upon the minorities that the Declaration was supposed to protect. As the Declaration had been viewed as being Eurocentric, targeting national minorities in Central and Eastern Europe in particular, the Declaration should be considered from a universal perspective. With reference to article 2, he suggested that it might be useful to highlight the relationship between the State and its minorities. That relationship took five different forms: elimination, assimilation, toleration, protection and promotion. Interpreting the Declaration in the light of these possible relationships would help the Working Group understand the type of protection required.

30. The observer for Switzerland fully agreed with Mr. Eide that the conditions of non-exclusion, non-assimilation and non-discrimination referred to in article 1 were crucial for the recognition of the existence and identity of minorities. Integration was to be undertaken with the full respect of the different characteristics of minorities. As for article 2, he suggested that examples of forms of political participation be drawn from the working paper prepared by Mr. de Varennes (E/CN.4/Sub.2/AC.5/1998/WP.4). With reference to article 3, more detail could be included on the relationship between the individual and the collective exercise of minority rights. On the basis of the Commentary, indicators could be elaborated which could assist not only the Working Group but also other human rights procedures and mechanisms, and States, to better apply the principles contained in the Declaration.

31. Mr. Hannum noted that the Declaration did not seek to prevent assimilation per se but rather forced assimilation. It was important to attempt to identify conditions requiring positive measures by the State and conditions when non-interference by the State would be more appropriate. In article 4 there was a shift in language from "shall", connoting an obligation, to "should", implying a wish. He suggested that it would be interesting to examine the implications of those differences in the language of the text. As for the issue of self-determination, he agreed with Mr. Kartashkin that there might exist situations when the separation of a minority from the State, reached at by agreement and with full respect of human rights, could be an option in resolving problems involving minorities.

32. Mr. Ruiz Vieytez suggested that the issue of gerrymandering be referred to in the interpretation of article 2.3. He observed that the Declaration did not cover situations whereby self-determination was considered an option for the full exercise of the rights of minorities and suggested that greater thought be given to that particular issue.

33. Mr. Gilbert observed that the Commentary reflected existing international human rights standards, few of which specifically referred to collective rights. It was possible, however, to advance collective minority rights through, for example, article 2.3 on the right of persons belonging to minorities to participate in decisions at the national and regional levels, to be read in conjunction with article 1 on the right to preserve the existence and identity of persons belonging to minorities. The best way forward was to base the Commentary on international law and drawing upon international human rights jurisprudence.

34. With reference to the discussion on integration v. assimilation, Mr. Kly noted that it was important to distinguish between integration and assimilation and what was understood by forced assimilation. On that subject, the observer for Estonia referred to a government paper being drafted on the subject of the integration of non-Estonians into Estonian society. She explained that the aim of this process was to shape new attitudes in society and thereby give an impetus to the integration process and to remove existing barriers to the active involvement of all persons into community life, to ensure that non-Estonians participated in rebuilding Estonia. She added that integration was a key element in promoting mutual confidence and understanding between the various groups in society.

35. The observer for the United Kingdom congratulated Mr. Eide for his excellent initial draft and suggested that it be submitted to States, competent agencies and non-governmental organizations for comments to be transmitted to the Working Group for consideration at its fifth session.

Best practices in the area of minority protection

36. The Chairman-Rapporteur presented a working paper prepared by the Secretariat entitled "Best practices in the area of minority protection" (E/CN.4/Sub.2/AC.5/1998/WP.2). The purpose of the paper was to encourage the establishment of databases containing systematic information on good practices organized according to the principles contained in the Declaration, as recommended by the Working Group at its third session (E/CN.4/Sub.2/1997/18, para. 109). To that end, the paper provided examples of best practices extracted from State party reports as a means to incite members, government representatives, agencies and minority groups as well as scholars to provide additional information on best practices with which they were familiar.

B. At the national level

1. Constitutional and main legal provisions protecting the existence and identity of minorities (art. 1.1 of the Declaration)

37. The observer for China mentioned that all countries should take effective measures to guarantee the rights of persons belonging to minorities, in accordance with their own situations and their own realities, while respecting the territorial integrity of States. The Working Group provided a good opportunity for the exchange of experiences. The observer for Azerbaijan stressed that while it was important to promote and protect the rights of minorities, the territorial integrity of the State was to be respected.

38. The observer for the Russian Federation mentioned that the practical application of the Declaration was vital. The Law of National and Cultural Autonomy which came into force in June 1996 guaranteed the rights of citizens and of national minorities, within the context of national self-determination. This ensured the development and maintenance of their characteristics in the areas of education, language and culture.

39. The observer for Hungary provided an overview of the various measures taken by his Government to promote the rights of the Roma minority and their social integration, with an emphasis on effective equality of opportunity and

positive discrimination. To this end, a coordinated policy for the Roma had been designed, including programmes in the areas of education, employment, agriculture, housing and anti-discrimination. Those programmes were supported by a variety of institutions such as the Coordination Council for the Roma, the Public Foundation for Roma in Hungary and the Roma Programme Committee. It was important to strike a balance between promoting the identity and characteristics of the Roma and their integration in society.

40. The observer for Romania mentioned that the Roma minority, recognized as a national minority by the Government in 1993, was now included in the council on national minorities and guaranteed seats in Parliament. In early 1997, an office for Roma issues was established to articulate policies for the promotion and protection of the rights of the Roma minority, and a consultative council for Roma affairs was created. Specific measures adopted by Romania to protect the Roma minority included programmes promoting their cultural identity, courses in the Romanes language, and special classes for educators and social workers dealing with Roma issues.

41. The observer for Ukraine mentioned that the Constitution guaranteed the protection of minorities. He specifically referred, inter alia, to the recent establishment of the institution of Ombudsman, the parliamentary committee on the rights of minorities and the State committee on religion. Reference was made to the measures adopted by Ukraine to integrate the Crimean Tatars upon their return to the autonomous republic of Crimea by addressing issues of citizenship, economic and social rights, and humanitarian policy. The observer stressed the need for dialogue between minorities and the Government in order to resolve problems involving minorities.

42. The observer for Sweden mentioned that a committee had recently been established to consider which people belonged to a minority in Sweden, in accordance with the following criteria: marked degree of cohesion and not in a dominant position; distinctive religion, language, tradition and/or culture; historical or long-lasting ties with Sweden; self-identification and wish to preserve their identity. The committee also recommended that the minority language, culture and history be included in school curricula and that minorities living in certain areas use their own language before the authorities. These recommendations were currently being considered by the Swedish Government.

43. The observer for the Summer Institute of Linguistics pointed out that in many countries there existed large numbers of minorities, such as in Papua New Guinea, Cameroon, Chad, Côte d'Ivoire, Ghana, the Solomon Islands and Vanuatu where no single ethno-cultural group could lay claim to majority status. In view of this, questions of ethnicity, language, culture and education must be seen in the context of both the distinct cultural groups and the networks of exchange and cooperation between such groups. Those in power must therefore create the space for the distinctive development of each minority grouping as well as for exchanges and cooperation between groups.

44. Observers representing minority groups raised many situations in which the existence and identity of the minority concerned were allegedly not adequately protected. This was claimed to be the case of the Basque, Corsican and Occitan minorities in France (Groupement pour les droits des minorités);

the African-Colombians of San Andreas Island in Colombia (High Commissioner Consultant for National Minorities of San Andreas); the Pastoralist community in Kenya who are marginalized by the majority population (Kenyan Pastoralist Forum); women belonging to minorities in Ethiopia (Ethiopian Women's Lawyers Association); the Assyrian minorities in the region of the Middle East (Universal Assyrian Alliance); the African-American minority in the United States of America (Caucasians United for Reparation and Emancipation); the minority groups in Nicaragua (Centre for Human, Civil and Autonomous Rights); the Kurdish minority in Iraq (Human Rights Alliance); the Kurdish minority in Turkey (Association des Assyro-Chaldéens de France); the Southern Cameroonians in Cameroon (Action for the Defence of Minorities); the Turkish Muslim minority in Greece (Western Thrace Minority Graduates Association); the Macedonian minorities in Albania, Bulgaria and Greece (Macedonian Human Rights Movement in Greece and Macedonian Human Rights Movement of Canada); and the Afro-Costa Rican minority in Costa Rica (Asociación Proyecto Caribe).

45. Mr. Bengoa stressed that many cases of non-recognition of minorities had been brought to the attention of the Working Group. It was therefore essential to address the question of the recognition of the existence of a minority. There was a difference between the collective nature of the rights of persons belonging to minorities, in community with other members of their group, to profess and practise their own religion, speak their own language and enjoy their own culture as provided for in article 27 of the International Covenant on Civil and Political Rights, and the more individual nature of the rights contained in the Declaration. It was not sufficient for minorities to be "allowed" to exercise their rights; they should also be able to "assert" their rights. In view of the very diverse and complex situations which had been presented, Mr. Bengoa suggested that the Working Group should seek to clarify its approach in respect of the existence and recognition of minorities and then address some of the issues raised.

46. Mr. Eide argued that the existence of a minority must be determined by a set of objective and subjective facts which were independent of the recognition by the Government. The objective factors might or might not include questions of descent, the mother tongue spoken by the persons concerned and the religion they practised. The subjective factors referred to self-identification by the persons concerned. It remained important, however, that States recognize minorities on their territory and it was therefore incumbent upon the Working Group to encourage States to do so.

2. The rights of persons belonging to minorities, individually or in community with other members of their group, to enjoy their own culture, to profess and practice their own religion and to use their own language, in private and in public (art. 2.1 and art. 3)

(a) The right of persons belonging to minorities to enjoy their own culture

47. The observer for the Espacio Afro-Americano suggested that the concept of the right of minorities to enjoy their own culture be considered in a flexible manner to encompass global processes which might undermine the right

such as modes of production and the preservation of goods and services. Such a wider interpretation would allow for better conditions so that minorities could preserve their right to be different, in particular their right to a different way of life.

48. Observers presented examples of minorities whose right to enjoy their own culture was, in their opinion, restricted. Reference was made to the Macedonian minorities in Albania, Bulgaria and Greece who were prohibited from performing folk songs and dances and from promoting their own folklore (Macedonian Human Rights Movement in Greece and Macedonian Human Rights Movement in Canada); the Lhotshampa minority in Bhutan who had no right to wear their traditional dress or maintain their traditional culture (Centre for the Protection of Minorities and Against Racism and Discrimination in Bhutan); the Ogoni minority in Nigeria who was prohibited from celebrating the cultural day of the Ogoni on 4 January and from mourning their dead (Movement for the Survival of the Ogoni People); the Hmong and Karen tribes in Myanmar whose culture and traditions were threatened through forced resettlement in the lowland areas (Centre for the Coordination of Non-Governmental Tribal Development Organization); and the Kurdish minority in Turkey which was deprived of its cultural rights (Kurdistan Reconstruction Organization).

(b) The right of persons belonging to minorities to profess and practice their own religion

49. The observer for the Ahmadiyya Muslim Association mentioned that Governments as well as minorities did not always understand the provisions contained in the Declaration, in particular with respect to the right of minorities to profess and practise their own religion. A mechanism was needed to make Governments honour their commitments and observe the principles contained in the Declaration with a view to developing a harmonious society in which minorities could enjoy their fundamental rights and freedoms.

50. Reference was made to minorities whose right to profess and practise their own religion was curtailed, namely: the Chin Christian minority in Myanmar who were prohibited from holding religious gatherings (Chin National Council); the Sharchhop minority in Bhutan who were denied the right to practice their Nyingmapa Buddhist faith (Centre for Protection of Minorities and Against Racism and Discrimination in Bhutan); the Ahmadis in Pakistan who were being persecuted under such charges as un-Islamic activities, blasphemy, and even calling themselves Muslims (Ahmadiyya Muslim Association); the Coptic minority in Egypt who could be prosecuted for converting to a religion other than Islam (Canadian Egyptian Organization for Human Rights); the Muslim minority in Greece who could not freely chose their own religious leaders (Western Thrace Minority Graduates Association); and Muslim minority women in India (Aawaaz-e-Niswan).

(c) The right of persons belonging to minorities to use their own language in private and in public

51. The observer for the Summer Institute of Linguistics mentioned that through the written use of local languages in communication, education and in development, minorities had a greater opportunity to express their needs,

desires and hopes. Local culture was mediated through the local language and the development of the written form of local languages enabled cultures to be transmitted to future generations, to be accessible to other communities, to gain greater prestige and to be visible by majorities.

52. The observer for Switzerland mentioned that in accordance with the latest revision of the Constitution in 1996, the language Romanche, spoken by only 0.6 per cent of the population, had acquired the status of a semi-official language; measures were to be undertaken to promote Romanche and the Confederation and the cantons had been jointly entrusted with furthering understanding and exchange between the linguistic communities of Switzerland. In conformity with the federal law of October 1995, financial assistance from the Confederation was being provided for measures promoting the use of Romanche in areas such as training, translation, and support to organizations favouring the use of Romanche. Two further laws were to be adopted to protect the Romanche language, to regulate the use of Romanche as a semi-official language by the Confederation and to promote understanding and exchange between linguistic communities.

53. Observers provided examples of minorities who were restricted in the use of their own language in private and in public: the Macedonian minority in Albania, Bulgaria and Greece who were prohibited from using the Macedonian language in public and from performing the liturgy of the Orthodox Church in the Macedonian language (Macedonian Human Rights Movement in Greece and Macedonian Human Rights Movement in Canada); the Turkman minority in Iraq who were prohibited from speaking the Turkman language among themselves at school and from speaking Turkman in public places (Turkman Cooperation and Cultural Organization); the Chango Hungarian minority in Romanian Moldavia who could not hold church services in their mother tongue (World Federation of Hungarians); the Assyrian minority in Iraq who were denied their right to have instruction in Assyrian (Universal Assyrian Alliance); and the African-American minority in the United States of America who were unable to cultivate and continue speaking their own language (Mr. Muhammed).

3. Effective participation by members of minorities, individually or in community with others, including in cultural, religious, social, economic and public life and in decisions at the national and regional levels concerning the minority to which they belong or the regions in which they live (art. 2.3)

54. Mr. de Varennes presented his working paper entitled "Towards effective political participation and representation of minorities" (E/CN.4/Sub.2/AC.5/1998/WP.4). He provided an overview of the obstacles to effective participation and representation of minorities in public life including exclusion of minorities from the political process through denial of citizenship, obstacles to the exercise of the right to vote, under-representation of minorities, and exclusion of citizens who were members of minorities from holding public office. Mr. de Varennes stated that States could not generally be absolutely neutral in terms of cultural, linguistic or religious preferences, which did not imply that there might not be mechanisms which increased the opportunities for minorities to have their voices heard and participate effectively in public life.

55. Perhaps the most basic way to provide more effective participation and representation of minorities in public life was to ensure that certain fundamental human rights were respected. Mr. de Varennes provided some examples of possible mechanisms such as federal systems, non-federal territorial autonomy arrangements, more effective legislative representation of minorities, guaranteed minority seats, proportional representation elections, a reduced vote threshold for minority participation in government, minority legislative veto or reserved powers, and the establishment of minority administrative bodies or independent advisory bodies. He concluded by stressing that participation and representation in public life were important to create links of loyalty to the State and the society of which persons belonging to minorities formed a part. Participation must also be effective to ensure that the interests of persons belonging to minorities could be heard, recognized and respected as far as possible in a tolerant and inclusive environment.

56. Mr. Sorabjee affirmed that in one sense the State had to be neutral and live up to the requirements of equality and non-discrimination. In certain situations, however, the State had a duty to take positive measures to guarantee effective political participation of minorities and could not, to this end, maintain a completely neutral position. It was important, however, to guard against reverse discrimination and to strike a balance between the status of the majority and affirmative action to promote the rights of minorities. The goal remained clear: the State had a duty to take affirmative action in order to remove the effects of discrimination that certain groups had suffered over the years and centuries.

57. Mr. Hannum said that it was important to bear in mind that political participation of minorities was necessary to enable them to maintain and develop their identity and characteristics in the spirit of the Declaration and to reverse the effects of past discrimination. Mr. Simon suggested that the working paper should also include an overview of the disadvantages of the mechanisms for political participation that Mr. de Varennes had described.

58. The observer for the Legal Information Centre for Estonia mentioned that tensions between minorities and Governments could be prevented by ensuring the effective political participation of minorities and thereby create an atmosphere of mutual confidence. The observer for Switzerland added that the federal system of government ensured the effective political participation of minorities, especially in the regions where they lived.

59. The Human Rights Defence Group of Cameroon stated that in some countries of the developing world, centralization was so extensive that minorities were suffocating, leading to their exclusion from participation in public life. Within such centralized systems there was a need for local authorities and local communities to be able to exercise full powers, within certain limits, to conduct their own affairs.

60. The observer for Hungary mentioned that before the March 1990 elections, 4 of the 386 seats in parliament were for the German, Slovak, South-Slavic and Romanian nationalities. There were two problems with that system: the representatives had been chosen by the State authorities and there existed more national and ethnic minority groups in Hungary than the

four officially recognized nationalities. In such a situation, only legislation based on positive discrimination, or including some elements of what so-called "affirmative action", was appropriate to give national and ethnic minorities in Hungary their own parliamentary representatives.

61. Observers presented examples of cases where, in their opinion, persons belonging to minorities were unable to participate effectively in cultural, religious, social, economic and public life and where their participation in decision-making at the national and regional levels was limited, namely: the Hindu minority in the Muslim-run State of Jammu and Kashmir in India where the minority has been the victim of gerrymandering of the electoral boundaries and minority participation in the political and administrative life of the State was limited (Indo-Canadian Kashmir Forum); the Assyrian minority in Iraq which was not represented in Government (Assyrian Universal Alliance); the Lhotshampa and Sharchhop minorities in Bhutan who were discriminated against in participation in national decisions affecting them (Centre for Protection of Minorities and Against Racism and Discrimination in Bhutan); the Macedonian minorities of Albania, Bulgaria and Greece who were almost totally excluded from political office (Macedonian Human Rights Movement in Greece and that of Canada); the Hungarian minority in Ukraine who could not fully participate in public life (Sub-Carpathian Cultural Association); the Pygmy and Mbororo minorities in Cameroon whose participation in public life was limited (Action for the Defence of Minorities); the Coptic minority in Egypt who were not represented either in parliament or in the Consultative Council (Canadian-Egyptian Organization for Human Rights); the traveller community in Ireland whose participation in public life needed to be improved through affirmative action (Belfast Travelers' Educational and Development Trust); the Dalits in India who were excluded from the development process (Human Rights Education Movement of India); the Batwa minority in Uganda who had no voice in local or national matters in the areas in which they lived (Human Rights and Peace Centre of Makerere University); the Hmong and Karen tribes of Myanmar who could not participate fully in the economic process and development of their country and whose effective political participation was limited (Center for the Coordination of Non-Governmental Tribal Development Organization); the Pastoralist community in Kenya which was excluded from participating in economic and public life (Kenya Pastoralist Forum); and the Mohajirs in Pakistan who were being deprived of their due representation according to the population ratio, especially in urban centres (Muttahida Quami Movement).

4. The right of persons belonging to minorities to learn their mother tongue and have instruction in their mother tongue (art. 4.3)

62. The observer for the Summer Institute of Linguistics stated that in the light of the practical experience gained by her organization, education in the mother tongue leads to overall better results at school and only education in their own language gave minorities an opportunity to develop their self-expression. Mother tongue education ensured that the minority languages were included in the school curriculum, that links between the school and the rest of society were more easily made, and that curriculum design and educational material in the minority setting were maximized.

63. With regard to restrictions of the right of persons belonging to minorities to learn and have instruction in their mother tongue, reference was made to: the Chin minority in Myanmar (Chin National Council); the Korean minority in Japan who were required to be educated only in the Japanese language and to learn Japanese history with Japanese-language textbooks and whose children, if educated in Korean or foreign schools, were not permitted to take entrance examinations for State-run universities (Union of Korean Teachers and School Clerks in Japan); the Circassian minority in Turkey who had no right to learn their mother tongue in schools (International Circassian Association); the Ogoni ethnic minority whose admission to tertiary-level education was restricted (Movement for the Survival of the Ogoni People); the Hungarian minority in Slovakia and in Yugoslavia who were not fully guaranteed the right to Hungarian language instruction (Federal Union of European Nationalities and World Federation of Hungarians); the Lhotshampa minority in Bhutan where the teaching of the Nepali language, their mother tongue, was banned from schools (Centre for Protection of Minorities and Against Racism and Discrimination in Bhutan); the Turkish minority in Greece where the Government set up nurseries in almost every village inhabited by Turks, causing problems in teaching the mother-tongue language (Western Thrace Minority Graduates Association); the Hungarian minority in Ukraine whose right to education in their mother tongue was restricted (Sub-Carpathian Cultural Association); the Turkman minority in Iraq where Turkman-language education in schools was replaced with Arabic-language education (Turkman Cooperation and Cultural Foundation).

64. The Chairman-Rapporteur mentioned that in accordance with the recommendation of the Working Group at its third session (E/CN.4/Sub.2/1997/18, para. 111), the "Hague recommendations regarding the education rights of national minorities were sent to non-governmental organizations for comments. The objective was to reflect the issues of relevance to the rights of minorities to learn and be taught their own language from regional and local perspectives, with a view to arriving at proposals for States to provide for education of, and in, the minority language. Comments were received from different regions of the world on: the needs of particular minority groups; the lack of resources for ensuring, in practice, education in the mother tongue and bilingual educational opportunities; and the participation of minorities in the development of educational curricula.

5. The value and content of intercultural education in providing persons belonging to minorities with adequate opportunities to gain knowledge of the society as a whole

65. Observers referred to situations where, in their opinion, minorities were not provided with adequate opportunities to gain knowledge of their own culture and traditions, and where the majorities did not receive the necessary knowledge of the values and traditions of the minorities. Cases referred to included: the Batwa minority in Uganda which had no access to educational opportunities (Human Rights and Peace Centre of Makerere University); and Muslim students in Egypt who did not learn about the religion or culture of their Coptic fellow citizens (Ibn Khaldoun Centre for Development Studies).

6. National recourse and conciliation machineries, including national commissions or councils, community mediation and other forms of voluntary dispute avoidance or settlement

66. The observer for the Legal Information Centre of Estonia presented his conference room paper entitled "Presidential round table on minorities in Estonia: successes and failures" (E/CN.4/Sub.2/AC.5/1998/CRP.1), which provided an example of a conciliation mechanism at the national level. He explained how the round table was set up and that it was composed of members of the Estonian Parliament, members of the Representative Assembly and representatives of the Union of National Minorities. Its main objectives were to promote stability, dialogue and mutual understanding between different population groups and act as a mediator between conflicting parties. The observer gave examples of its successes and failures and concluded by stating that the round table was a real mechanism for dialogue but that political will was essential to ensure that the mandate entrusted to it could be carried out effectively.

67. The observer for Finland stated that with regard to the Sami and Romanies, special mechanisms existed for dialogue between the minority and the Government. More specifically, the Sami Parliament looked after the Sami language and culture and took care of matters relating to the status of the Sami. In addition, the Sami also had the right to be heard in the national Parliament on matters of special importance to them. Since 1996, both State and municipal authorities had an obligation to negotiate with the Sami Parliament in all far-reaching and important measures which might affect the Sami. As for the Romany minority, an Advisory Board on Romany affairs was established, half of the members being Romanies and the other half composed of representatives of the central Government.

68. Mr. Gilbert provided an overview of the Northern Ireland Peace Agreement as one example of conflict settlement. He mentioned that the recent peace agreement addressed a whole range of issues for Northern Ireland including, on the one hand, rights for the respective populations based on their religious affiliation, their culture and their language and, on the other, rights with respect to their political participation. The Agreement provided for a devolved autonomous Assembly that would allow participation by all groups in society committed to democracy in such a way as to ensure representation of both Catholic and Protestant communities, as well as for a Human Rights Commission. The Agreement also allowed for the involvement in the governance of this part of the United Kingdom by the Irish Republic through the establishment of a British-Irish Intergovernmental Conference. In addition, the Government of the United Kingdom had accepted that if a majority wished to secede in order to join with the Republic of Ireland, then it would put in place legislation to achieve that end, which was said to be part of the people of the island of Ireland's right to self-determination. Mr. Gilbert concluded by stating that the Agreement's provisions were specific to the particular situation and could not be transplanted unadapted to any other minority rights situation.

69. Mr. Simon suggested that priorities needed to be directed towards more vulnerable groups, in particular with respect to early warning signs of tensions between minorities and Governments. To that end, he urged States to establish more types of complaint procedures such as mechanisms for local dispute resolution and conciliation.

C. At the bilateral and regional levels

The existence, use and value of bilateral treaties and similar agreements

70. The observer for the European Centre for Minority Issues presented her working paper entitled "The role of bilateral treaties in the protection of national minorities in Central and Eastern Europe" (E/CN.4/Sub.2/AC.5/1998/CRP.2). She stated that, on the one hand, the bilateral treaties refer to the reinforcement of the existing State borders and, on the other, established commitments regarding the protection of their national minorities. The minority provisions included in the treaties covered the rights of minorities to express, maintain and develop their ethnic, cultural, linguistic or religious identity and characteristics, the right to establish organizations and to participate in decision-making. Some treaties referred specifically to the provisions contained in the Declaration. The bilateral treaties did not mention collective rights and failed to provide the national minorities concerned with any form of self-government or autonomy. Implementation mechanisms referred to in the treaties were weak, although some treaties provided for the possibility for the States parties to request consultations if necessary, while others referred to joint intergovernmental committees, entrusted with monitoring the implementation of the provisions. The observer provided an overview of the possible impact as well as the advantages and disadvantages of such bilateral treaties. She mentioned that the outcome and importance of those treaties would always be influenced by the fact that most of them had been negotiated without the participation of the minorities concerned. She concluded by stating that the bilateral treaties could contribute to the improvement of minority protection and set examples for other arrangements.

D. At the global level

1. The role of the treaty bodies

71. Presentations were made by staff members of the Office of the High Commissioner for Human Rights on two treaty bodies: the Human Rights Committee and the Committee on the Rights of the Child.

72. The Secretary of the Human Rights Committee stated that it was a crucial supervisory mechanism for one of the most important legally binding rights for minorities, namely that contained in article 27 of the International Covenant on Civil and Political Rights on the rights of ethnic, religious or linguistic minorities to enjoy their own culture, profess and practise their own religion and use their own language. Non-governmental organizations had a crucial role to play in providing information to States when they were preparing their reports for the Committee, either in collaboration with national institutions or directly to their respective Governments. Reference was made to the constructive dialogue with the Government of Finland concerning the Roma and

Sami minorities, and to the position of some States which contended that no minorities existed on their territory and that article 27 was therefore not applicable. In such cases, the Committee had circumvented article 27 with a view to considering an alleged violation under other relevant articles of the Covenant such as article 17 on the right to privacy or article 26 on the right to non-discrimination. In its recommendations, the Committee had encouraged those countries to recognize and identify minority groups within their territories. The Secretary mentioned that 92 States had acceded to the Optional Protocol to the Covenant which provided for the consideration of communications from individuals claiming to be victims of violations of any of the rights contained in the Covenant, including under article 27. Regrettably, in the event that a violation has been found and a remedy recommended, the Committee was not in a position to ensure that it is enforced. A Special Rapporteur on the follow-up of Views monitors compliance and personally intercedes in appropriate cases. In 1995, a follow-up mission was organized to a State party, with concrete results. The Secretary of the Committee concluded that the procedure had great potential but that currently the jurisprudence was rather limited.

73. During the discussion, questions were raised about the scope for follow-up activities, the coverage by article 27 of specific minority groups, the procedures under the Optional Protocol, the definition of minorities, and the implication of the statements made on the non-applicability of article 27.

74. A Human Rights Officer provided information on the implementation of the Convention on the Rights of the Child, which had been ratified almost universally and whose article 30 protected the rights of children belonging to ethnic, religious or linguistic minorities. He noted that the guidelines for States parties' reporting under article 30 of the Convention covered issues such as access to education and health services, use of language, freedom of religion, and means by which minority cultures are safeguarded and developed. Information on minorities was also considered under other relevant articles of the Convention such as article 2 on non-discrimination, article 3 on the best interests of the child, article 8 on the right of the child to preserve his or her identity, and article 29 on education, including education in the child's own language. Finally, reference was made to information to be provided to children belonging to minorities, and that the Convention was being disseminated in minority languages.

75. Questions regarding the Committee on the Rights of the Child referred to the reservations and declarations made by some countries under article 30, the fundamental nature of the right to identity, issues of inter-country adoption, and the notion of the best interests of the child.

76. Ms. Bidault mentioned that the Committee on the Elimination of Racial Discrimination had adopted a wide interpretation of discrimination based on national or ethnic origin that encompassed religious and linguistic minorities, and had urged States parties to adopt special measures to promote minority groups despite the fact that the principle of non-discrimination per se did not imply the adoption of such measures. In its general comment 18 (1989) on non-discrimination the Human Rights Committee had adopted a similar position in that the principle of equality could require adoption by States of measures in favour of disadvantaged groups. The Committee on

Economic, Social and Cultural Rights, for its part, encouraged States parties to adopt measures protecting the rights of minorities in situations of economic and social deprivation and urged that resources be used for the preservation of language, culture, and the traditional way of life of minority groups.

77. Mr. Rehman observed that although a consensus had not been reached by the international community on a definition of minorities, a definition would be useful, in particular for the work of the various treaty bodies. With reference to the right to self-determination and autonomy, Mr. Rehman noted that there existed some ambiguity when treaty bodies such as the Human Rights Committee dealt with the right to self-determination under article 1 and the rights of persons belonging to minorities under article 27 of the Covenant. He observed that although minorities might not be entitled to external self-determination (i.e. secession), they had a clear role to play in terms of internal self-determination (i.e. autonomy). This approach, he stated, should be considered by the Human Rights Committee in particular when individual complaints were submitted under article 1. Autonomy within the territorial boundaries of a State should be regarded as a possible solution to minority problems, rather than a threat to the integrity of the State. He concluded by suggesting that the treaty bodies needed to consolidate their work to ensure greater consistency between their activities.

2. The role of the Office of the High Commissioner for Human Rights: the 1503 procedure

78. A Human Rights Officer gave a presentation on the confidential 1503 procedure for complaints of human rights violations, which was a mechanism for monitoring situations as opposed to individual cases. She explained that the author of a communication must identify him- or herself and that a clear statement of claims, substantiated with relevant facts, had to be submitted. The communication was then channelled into the 1503 procedure unless it referred to one of the countries being examined under a public procedure at the level of the Commission on Human Rights, it clearly fell under one of the thematic mandates such as the special rapporteurs or the working groups, it referred to a country having acceded to treaty-based procedures or it was directed against non-State actors. The communications were summarized in monthly confidential documents and copies of the original were sent to the authorities of the country concerned. The Working Group on Communications of the Sub-Commission then considered the communications, together with the responses from States, and selected those which appeared to reveal a consistent pattern of gross and reliably attested violations of human rights, for transmission to the Sub-Commission. The Sub-Commission in turn considered which communications to transmit to the Commission, which in turn took one of four courses of action: to discontinue its examination; to keep the situation under review; to keep it under review and appoint an independent expert; or to discontinue it in order to take it up in public.

79. The discussion focused on whether the procedure was open to all groups irrespective of their consultative status, the relationship between the special rapporteurs and the 1503 procedure, the question of the exhaustion of

internal remedies, and whether the Working Group could propose to the Sub-Commission itself to take minority questions into consideration when dealing with cases under the 1503 procedure.

80. The observer for Austria stated that it would be interesting to include, in a database, a compilation of all the special procedures and treaty bodies as they addressed issues pertaining to minorities. It would be useful, at the next session, to learn about the experience of the implementation of the Council of Europe Framework Convention on National Minorities and the European Charter on Minority Languages, both of which had entered into force at the beginning of 1998. He suggested that the Working Group could benefit from presentations on the relevant activities of the Organization for Security and Cooperation in Europe (OSCE) and those of the OSCE High Commissioner on National Minorities.

3. The role of United Nations special rapporteurs

81. Two United Nations special rapporteurs provided information to the Working Group on their mandates and activities, the Special Rapporteur on religious intolerance and the Special Rapporteur on freedom of opinion and expression.

82. The Special Rapporteur on religious intolerance, Mr. Abdelfattah Amor, stated that since 1993 he had submitted a number of reports to the General Assembly and the Commission on Human Rights and had undertaken visits to countries such as Australia, China, Germany, Greece, the Islamic Republic of Iran, Pakistan, the Sudan and the United States of America. He often addressed issues of concern to religious minorities, and one of the difficulties was to define a religious minority and a religious belief. The Special Rapporteur stressed that State religion could only be criticized if it gave rise to discrimination against other religions or to religious intolerance. The specific problems he addressed in his work included the prohibition of the conversion from one religion to another, the propagation of religious belief, the imposition of a religion upon non-believers, the status of women who are often victims of additional discrimination carried on in the name of religion, and the issue of religious fundamentalism. He said that he would welcome the submission of credible information on religious discrimination and religious intolerance anywhere in the world.

83. During the ensuing discussion, questions were raised about the Special Rapporteur's activities in specific countries, the follow-up undertaken and the functions of his mandate.

84. The Special Rapporteur on freedom of opinion and expression, Mr. Abid Hussain stated that his task was to investigate the extent to which people in different parts of the world were able to freely express their opinions. The values of democracy, in which diversity could flourish, were important but not sufficient to ensure full freedom of opinion and expression; other values must also exist so that diversity could find expression within society. Mr. Hussain explained that he addressed individual cases of violations of the right to freedom of opinion and expression and also undertook country visits. In some countries, the invasive nature of the electronic media was used as a justification to curtail the right to freedom

of opinion and expression. His contribution to better respect for the right to freedom of expression was to set in motion a process of change at the national level; that immediate solutions to problems could not be expected. Mr. Hussain concluded by recalling that in the multicultural world of today, both minorities and majorities were encouraged to live together and solutions must be found to accommodate diversity, which enriched every society.

85. The ensuing discussion focused on the practical follow-up of the Special Rapporteur to his country visits, the need for dialogue between the Special Rapporteur and the highest authority of the State, and his possible impact in countries where State ideology or religion curtailed the individual's right to freedom of opinion and expression.

4. The role of United Nations bodies and specialized agencies

86. The observer for the World Health Organization (WHO) stressed that it was important to integrate the right to health into mainstream human rights protection. In order to guarantee to all the highest standard of mental and physical health, policies needed to address issues such as equity, non-discrimination and dignity. As preventable ill-health followed the fault lines of society, i.e. poverty and discrimination, health status indicators were useful in highlighting human rights violations. As discrimination and rejection contributed to stress and negative consequences for the health status of population groups which were already vulnerable sectors of society, such as minorities, the inclusion of human rights standards in health and practice could lead to an improvement in health status. One of the major goals of WHO was therefore to address the health needs of the underserved and vulnerable groups in society.

87. The observer for the United Nations Educational, Scientific and Cultural Organization (UNESCO) mentioned that her agency had set up a new programme called A Culture of Peace. The programme consisted of promoting the values, attitudes and behaviours that reflected and inspired social interaction and sharing - values that rejected violence, prevented conflicts and guaranteed the exercise of all human rights. The year 2000 had been designated the Year for Culture and Peace, in which the Working Group and minorities were encouraged to participate. The observer raised the issue of the respect of the rights of religious minorities in theocratic societies, and the need to examine society as a whole to resolve conflicts involving minorities rather than merely its majority and minority components. She added that the question of language, another major focus of UNESCO, was a means to promote linguistic pluralism, education for peace and intercultural dialogue. To that end, UNESCO was assisting member States to implement language policies such as the promotion and teaching of the mother tongue. UNESCO was also striving to preserve and maintain the common heritage of mankind, including traditional and popular cultures of minorities, considered to be the guardian and memory of humanity.

88. Mr. Mehedi added that the establishment of UNESCO Chairs in specific countries was another cornerstone of its programme of A Culture of Peace. He also mentioned a meeting organized by UNESCO in Algeria, which focused on contemporary forms of violence and addressed issues of peace and conflict resolution.

89. The observer for the International Labour Organization (ILO) recalled the tripartite membership of the ILO, namely, Government, labour and management. ILO activities were centred on standard-setting, operational work through its field structure, and research and its dissemination. With reference to standard-setting the two most pertinent conventions for minorities were Convention No. 111 on non-discrimination, including on the basis of religion and "national extraction", and Convention No. 169 on indigenous and tribal peoples. With regard to Convention No. 111, mention was made of the draft declaration on fundamental principles 1/ which proposed to lay down certain basic principles by which States would be bound by virtue of their membership of the ILO, irrespective of whether they had ratified specific conventions. The draft declaration which addressed the elimination of discrimination based on employment, would undoubtedly promote the protection of minorities and contribute to the elimination of discrimination based on religion and "national extraction". The operational work of the ILO had relied on expanded teams at the subregional level, composed of specialists in standards and relations with employers and workers, as a means to respond better and faster to the needs of States in the areas of the ILO's competence. This included the provision of technical assistance and increased access of civil society and workers to information on their rights. As for recent research undertaken, the representative drew attention to a new ILO publication on affirmative action in employment of ethnic minorities and persons with disabilities.

90. The discussion with the representatives of the specialized agencies focused on their activities at the country and regional levels, including their activities aimed at protecting particular minority groups, the provision of technical assistance and advisory services, the ways by which their offices could be contacted by minorities, cooperation and collaboration between the various agencies and the Working Group, the establishment of databases, and the submission of information by agencies to the Working Group.

5. The role of non-governmental organizations

91. A number of NGOs provided information on the ways they promoted and protected the rights of persons belonging to minorities. The observer for the Ibn Khaldoun Centre for Development Studies mentioned that the Centre had organized a series of seminars and conferences on the Declaration and the Working Group, thereby raising the issue of minorities in the Arab world. Training on minority rights and the ways by which minority rights could be promoted and protected by the United Nations human rights mechanisms and procedures was also being provided. The observer for the Groupement pour les droits des minorités stated that his organization undertook research, promoted discussion, disseminated information and applied pressure on Governments to influence policy in the area of minority protection.

1/ The International Labour Conference adopted the "ILO Declaration on Principles and Rights at Work" on 18 June 1998.

III. EXAMINING POSSIBLE SOLUTIONS TO PROBLEMS INVOLVING MINORITIES, INCLUDING THE PROMOTION OF MUTUAL UNDERSTANDING BETWEEN AND AMONG MINORITIES AND GOVERNMENTS

92. The observer for the Canadian-Egyptian Organization for Human Rights noted that while it was important to diagnose problems facing minorities and to search for suitable solutions, it was still more important to create the mechanisms by which practical and just solutions could be implemented. The observer for the Kurdistan Reconstruction Organization mentioned that history had shown that the rights of minorities were better catered for only when the State itself was sufficiently stable, mature, and governed by consensus. There were a number of different combinations of circumstances within which minority groups could find themselves, including political, geographical, socio-religious, socio-economic and an almost infinite combination of those. A single solution for all groupings was almost impossible. Unique and tailored solutions that satisfied the needs of minorities while protecting the legitimate security interests of the State needed to be sought. With regard to the provision of educational opportunities for minorities, the observer for the Belfast Travelers' Educational and Development Group suggested that educational policy and programmes needed to be tailored to the needs of minority communities. The observer for the Canadian-Egyptian Organization for Human Rights further suggested that autonomy arrangements be considered as a possible way of guaranteeing the protection of the characteristics of minorities as a means of better protecting their nationality, ethnicity, religion and language. This, he suggested, could be done within the framework of the Declaration.

93. The observer for the Institut Suisse du Fédéralisme provided an overview of the Swiss multicultural State as a model of mutual understanding and tolerance: Switzerland was composed of peoples and of cantons; individuals could, through the system of direct democracy, take individual decisions within their own limited group; the system conferred political rights upon cultural and historic entities; both individual and collective equality were guaranteed; Swiss democracy was composed of complementary democracies at communal, cantonal and federal levels; and direct democracy led to mutual respect and tolerance.

1. The rights of minorities and the role of the media

94. The observers for the International Service for Human Rights and the Minority Rights Group presented the working paper entitled "Expert seminar on the role of the media in protecting minorities" (E/CN.4/Sub.2/AC.5/1998/WP.3). Reference was made to the role the media could play in dispelling intolerance concerning minority communities and promoting intercultural understanding. It was against this backdrop that the two groups had organized an expert seminar on the role of the media in protecting minorities. The seminar was organized further to a recommendation of the Working Group at its third session, in an effort to involve more experts in analysing issues of relevance to the Working Group. The participants at the seminar adopted nine recommendations and requested the Working Group to recommend that States encourage and promote the rights of minorities and intercultural understanding through the effective use of the media. The recommendations adopted by the seminar covered: codes of conduct for the media to protect minorities and promote intercultural

understanding; training programmes for journalists; adequate protection from attacks on journalists covering ethnic conflicts and minority issues; licensing of the print media; State regulation of the media; access to and financing of the media; and the role of United Nations agencies, treaty bodies and mechanisms in encouraging the media to protect minorities and promote understanding between different groups in society. The recommendations of the seminar are reproduced in annex I to the present report.

95. The observer for Finland welcomed the nine recommendations of the expert seminar and expressed support for their implementation in practice. She added that Finland had ratified the European Charter for Regional or Minority Languages which included an article about the media, and that her Government would therefore be amongst the first States to submit a report on the implementation of the Charter.

2. Examination of issues relating to forcible displacement of populations, including threats of removal, and the return of persons who have been displaced

96. Examples were provided of situations of refugees belonging to minorities, internally displaced minorities and population transfers: the Assyrian minority in Iraq who had been forced to undergo internal deportation (Assyrian Universal Alliance); the plight of over 94,000 Nepali-speaking minority Lhotshampa Bhutanese refugees, who were being forced to live in refugee camps in eastern Nepal, and another 20,000 Bhutanese refugees living outside camps in Nepal and India (Centre for Protection of Minorities and Against Racism and Discrimination in Bhutan); the transfer of Serbian refugees to Hungarian-majority towns and villages in Yugoslavia (World Federation of Hungarians); and the transfer of Arabs into Turkman regions in Iraq (Turkman Cooperation and Cultural Foundation).

IV. RECOMMENDING FURTHER MEASURES, AS APPROPRIATE, FOR THE PROMOTION AND PROTECTION OF THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

97. The observer for the Summer Institute of Linguistics recommended that the Declaration be disseminated as widely as possible and that it be translated into the various languages of minorities. The observer for the Federal Union of European Nationalities suggested that in order to further promote and protect the rights of persons belonging to minorities, a legally binding instrument should be elaborated drawing on the experience of the Council of Europe Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.

98. In addition, a similar mechanism to that of the OSCE High Commissioner on National Minorities could be established at universal level within the framework of the United Nations.

99. The observer for the Assyrian Universal Alliance suggested that with regard to refugees belonging to minorities, criteria to detect early warning signs should be applied, such as a pattern of escalating racial hatred and violence or racist propaganda, a significant pattern of racial discrimination,

and a significant flow of refugees. The observer recommended that the international community should prevent and/or respond to situations of displacement in coordination with UNHCR, and urged that information on a regular basis be submitted to forums such as the Working Group on Minorities so that such situations could be brought to the attention of the international community and early action considered.

V. THE FUTURE ROLE OF THE WORKING GROUP

100. The observer for the Canadian-Egyptian Organization for Human Rights suggested that as many Governments were absent from the sessions of the Working Group, regional and national conferences on minorities should be held so that representatives of minorities, majorities and Governments might meet to discuss the problems facing minorities and to search for possible solutions, in cooperation with the Working Group. Mr. Chaszar suggested that Governments not represented at the session should be informed if a complaint were made concerning the situation of minorities in their respective country. Those Governments should be accorded the opportunity to answer the complaints by submitting information to the Working Group if they so desired, or could respond to a questionnaire drawn up by the Working Group on the basis of the Declaration.

VI. OTHER MATTERS

The issue of citizenship

101. A number of examples were provided of persons belonging to minorities who were allegedly denied citizenship and therefore also denied the enjoyment of certain fundamental rights. These included: the Circassian minority who had been deported and wished to return to the territory of the Russian Federation (International Circassian Association); the Russian minority in Latvia, many of whom had been born in Latvia but were deprived of citizenship and thus also of political rights and participation in decisions at the national level (Latvian Human Rights Committee); the Lhotshampa minority in Bhutan whose citizenship certificates had been confiscated (Centre for Protection of Minorities and Against Racism and Discrimination in Bhutan); the Kurdish minority in the Syrian Arab Republic who had been denied formal documents of nationality (Kurdistan Reconstruction Organization); and the Crimean Tatars who had returned to the Ukraine, who had no right to participate in elections, become civil servants, travel abroad, take part in the privatization of State property and land, and to study free of charge in State educational institutes and universities (Mejlis of the Crimean Tatar People).

VII. CONCLUSIONS AND RECOMMENDATIONS

102. The Working Group expressed its deep appreciation to the government observers, the observers from intergovernmental and non-governmental organizations, including representatives of minority groups, and scholars, many of whom had travelled to attend the session at great cost, for having provided information about important developments concerning situations involving minorities in their countries.

103. Mr. Kartashkin, Mr. Bengoa and Mr. Sorabjee suggested that information about the situations involving minorities which had been brought to the attention of the Working Group during the session be transmitted to the Governments concerned. In that way, the Governments would be informed of the issues raised and would be given an opportunity to provide additional information, if they so wished. Specific reference was made to article 6 of the Declaration by which "States should cooperate on questions relating to persons belonging to minorities, inter alia, exchanging information and experiences, in order to promote mutual understanding and confidence". Mr. Kartashkin suggested in particular that this information be sent to States together with a questionnaire on how they applied the principles contained in the Declaration. The members also felt that such an exchange of information and views between the Working Group and the Governments concerned would encourage greater dialogue between minorities and Governments, one of the major objectives of the Working Group.

104. The observers for the International Centre for Ethnic Studies, the International Service for Human Rights, the Minority Rights Group and the Unrepresented Peoples and Nations Organization recommended that: the members of the Working Group visit countries, upon the request of Governments or minorities, to identify, inter alia, examples of good practices; under article 9 of the Declaration, all United Nations agencies should be requested to submit written information on their activities concerning the implementation of the Declaration; the Working Group consider reorganizing its agenda in a more efficient manner; a voluntary fund be set up to enable wider participation of minority representatives in the sessions of the Working Group; the Secretariat encourage Governments to invite their experts to participate in the sessions; a database containing information on minorities, the activities in the area of minority protection of treaty bodies, country and thematic rapporteurs as well as United Nations agencies, should be established by the Secretariat; and that further resources be allocated to the Secretariat.

105. The observer for Switzerland suggested that the agenda of the Working Group be simplified; that UNESCO be consulted on the activities of the Working Group on issues concerning education; that the Commentary on the Declaration be transmitted to Governments, agencies, NGOs and scholars for their comments; and that the Working Group meet the five regional groups to inform them of its activities and encourage greater participation of States in its sessions.

106. The observer for the Ahmadiyya Muslim Association suggested that States be present at the next session so that constructive dialogue could be held between minorities and the States concerned. The observer for the Egyptian-Canadian Organization for Human Rights stressed that the links between the Working Group and NGOs should be strengthened. The observer for the International Centre for Ethnic Studies suggested that the issues of minority women and migrants be considered in greater detail by the Working Group. The observer for the Indo-American Kashmir Forum stressed the need to give more attention to displaced minorities, and the observer for the Legal Resource Centre of Estonia suggested that examples of good practices would be helpful when considering different situations of minorities throughout the world.

107. Ms. Castelo suggested that the Working Group: compile a study on the recommendations relevant to minorities contained in the various official documents of international conferences; take into account and form links with other pertinent forums under international instruments related to the United Nations where issues of minority situations were being discussed; make an inventory of forums sponsored by United Nations specialized agencies relevant to minorities; establish a permanent secretariat to facilitate the direct and effective participation of minority representatives at its sessions; compile a collection of models of autonomy; and establish a database on minorities.

108. In the light of its deliberations, the Working Group recommended the following:

(a) In order to continue the focus on thematic issues, each member of the Working Group agreed to prepare a working paper on: conflict prevention in situations involving minorities (Mr. Sorabjee), existence and recognition of minorities (Mr. Bengoa), multicultural and inter-cultural education (Mr. Mehedi), citizenship and the rights of non-citizens (Mr. Eide), and universal and regional mechanisms for minority protection (Mr. Kartashkin);

(b) The Working Group decided that the members would be available for visits to countries at the invitation of the Governments concerned, on condition that funding was available;

(c) The Working Group decided that it would make available to Governments, in conformity with article 6 of the Declaration, situations which had been brought to the attention of the Working Group during its session on the basis of the information submitted and recommendations made. To that end, standard letters would be transmitted to the Governments concerned, including one paragraph on the issues which had been raised;

(d) The working paper containing the Commentary to the Declaration would be submitted to Governments, agencies and non-governmental organizations for comments and suggestions as a means to continue the discussion, at the next session, on the content and scope of the principles contained in the Declaration. In that context, the Working Group might also take into account the "Hague Recommendations on the Education Rights of Minorities" and the comments received thereon. On that basis, the Working Group would initiate a practice of developing interpretative comments on individual articles;

(e) The specialized agencies would be called upon to provide information on their activities in the field of minority protection (in conformity with article 9 of the Declaration) to the Working Group well in advance, thereby allowing for more detailed discussion about their policies and programmes. It was also decided that NGOs wishing to participate at the next session should send to the Secretariat, in advance, specific questions on the role and activities of the agencies so that responses could be prepared in good time;

(f) The Working Group decided that contact should be made with research institutes and NGOs to review the information on the protection of the rights of persons belonging to minorities submitted by States to treaty

bodies and with regard to questions raised during the examination of the relevant reports, with a view to the preparation of a compilation on their work in this field. Similar contacts would be made with regard to the work of the special rapporteurs;

(g) The Working Group recommended that a feasibility study be prepared by one or more NGOs such as the Minority Rights Group in London and the Centre on Ethnic Studies of Colombo on the establishment of a database on minority issues;

(h) The Working Group recommended that a pocket edition of the Declaration be prepared in the national as well as minority languages. Translation into minority languages could be entrusted to the minorities concerned, with the possible collaboration of international NGOs;

(i) It was decided that the agenda for the next session would be reviewed in order to simplify the items under discussion and sharpen the focus on thematic issues;

(j) The Working Group suggested that steps be taken to ensure more active participation by States in forthcoming sessions;

(k) The Working Group recommended the establishment of a voluntary fund to enable, inter alia, greater participation of minority representatives at its sessions;

(l) The Working Group decided to take steps, in cooperation with relevant institutes and/or NGOs, to encourage the organization of expert seminars in between the sessions of the Working Group, focusing primarily on the subjects of the working papers for its fifth session.

109. In conclusion, Mr. Kartashkin noted that the work of the session had reflected the efforts of the Working Group to seek more effective and innovative ways to protect minority rights. Mr. Sorabjee added that the issues discussed placed minority rights into perspective and highlighted certain elements common to all minorities which transcended geographic boundaries. Mr. Mehedi hoped that, with a view to greater protection of minorities, the Declaration would one day become a legally binding convention.

110. The Chairman-Rapporteur concluded that the Working Group was in a position to take a more active role within the framework of its mandate and he reiterated his conviction that the protection and promotion of the rights of minorities contributed to the political and social stability of the States in which they lived.

111. It was decided that the members would meet again during the fiftieth session of the Sub-Commission in August 1998 to discuss the revised agenda for its fifth session and the date thereof.

Annex I

RECOMMENDATIONS OF THE EXPERT SEMINAR ON THE ROLE OF THE MEDIA IN PROTECTING MINORITIES

The participants of the expert seminar on the role of the media in protecting minorities request the United Nations Working Group on Minorities to recommend that States should encourage and promote the rights of minorities and intercultural understanding through the effective use of all media. To this end, the participants make the following recommendations to the Working Group:

1. Codes of conduct for the media

(a) The Working Group should recommend that journalists' and media associations should address the issue of self-regulation and professional ethics, and develop and implement codes of conduct to protect minorities and promote intercultural understanding through the media. Special efforts should be made to ensure the involvement of minority representatives; due regard should be given to intercultural perspectives in this process. States should ensure the existence of favourable conditions so that this process may take place.

(b) The Working Group should consult with Governments, specialized agencies and NGOs including minorities on the relevance of codes of conduct. It should request the Secretariat to prepare an analytical report of the comments received on existing codes of conduct.

2. Training

(a) Intercultural and multicultural education and training programmes for journalists are crucial to ensure the appropriate treatment of minorities in the media. Such programmes should, among other things, sensitize journalists to prejudice and discrimination. To this end, the involvement of minorities in the development of these programmes is essential. Local educational institutions, relevant NGOs, schools of journalism and journalists' associations should be involved.

(b) States and relevant United Nations bodies and agencies should allocate sufficient resources for the development of training programmes, and ensure that such programmes are carried out. States should encourage and facilitate access of both minority and majority journalists to "diversity" training through the Activities and Programmes Branch of the Office of the High Commissioner for Human Rights. The Working Group should propose that the Technical Assistance branch allocate funds for such training, in particular to specialized institutes and organizations.

3. Attacks on journalists

Attacks on journalists and their families and property and on members of the press covering ethnic conflicts, minorities' issues and related human rights questions can lead to self-censorship. Governments should ensure that adequate protection from such attacks is provided to journalists reporting on

these issues, in particular to journalists from minority communities. The Working Group should welcome the attention given by the Special Rapporteur on freedom of opinion and expression to protecting journalists from attacks.

4. Licensing

There should be no government licensing of the print media. Licensing of broadcasters should be based on criteria which are technical rather than political and should not be used as a tool of censorship. Criteria should be stated in clear and unambiguous terms, and be published and widely disseminated.

5. State regulation of the media

The Working Group should recall that there are limits to the restrictions on the right to freedom of expression. In accordance with international laws, such restrictions must be provided for by domestic legislation and be subject to independent judicial scrutiny. In this context, the Working Group should also recall article 2 (5) of the Declaration which relates, inter alia, to cross-border contacts.

6. Access to, and financing of, the media

In line with the principles of pluralism, equality and non-discrimination, States should not only allow but also facilitate the access of minorities to the media, including, if necessary, through affirmative action. In this vein:

(a) States should provide a measure of resources and infrastructure to minorities wishing to establish their own media. These communities must be allowed to raise the required funds, both locally and abroad, without hindrance or punitive measures.

(b) States must ensure that the mainstream media are accessible to minorities, without discrimination. Mainstream media should be reflective of the diversity of the society they serve.

(c) International and national development agencies and United Nations agencies should make funding and technical assistance available for minority media initiatives.

7. United Nations agencies

The Working Group should reaffirm that the media are an important tool to promote, protect and implement the rights of minorities. To this end, the Working Group should encourage United Nations bodies and agencies, in particular UNESCO, to pay special attention to the media in the context of their obligations in accordance with article 9 of the Declaration.

8. United Nations treaty bodies

Periodic reports to the treaty bodies, as well as the annual reports of the thematic and country special rapporteurs to the Commission on Human Rights, should include references to the measures taken by States to ensure that minorities are granted radio and television licences on a non-discriminatory basis and in a manner that will ensure pluralism.

9. United Nations mechanisms

United Nations human rights mechanisms and United Nations specialized agencies should take full account of all of these recommendations in their work.

Annex II

LIST OF DOCUMENTS BEFORE THE WORKING GROUP ON MINORITIES ON ITS FOURTH SESSION

Symbol	Title
E/CN.4/Sub.2/AC.5/1998/1	Draft provisional agenda
E/CN.4/Sub.2/AC.5/1998/1/Add.1	Annotations to the draft provisional agenda
E/CN.4/Sub.2/AC.5/1998/WP.1	Commentary to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; working paper submitted by Mr. Asbjørn Eide
E/CN.4/Sub.2/AC.5/1998/WP.2	Best practices in the area of minority protection: working paper submitted by the Secretariat
E/CN.4/Sub.2/AC.5/1998/WP.3	Expert seminar on the role of the media in protecting minorities - recommendations for the United Nations Working Group on Minorities: working paper prepared by the International Service for Human Rights and the Minority Rights Group
E/CN.4/Sub.2/AC.5/1998/WP.4	Towards effective political participation and representation of minorities: working paper prepared by Mr. Fernand de Varennes
E/CN.4/Sub.2/AC.5/1998/CRP.1	Presidential round table on minorities in Estonia: successes and failures: conference room paper submitted by Mr. Aleksei Semjonov.
E/CN.4/Sub.2/AC.5/1998/CRP.2	The role of bilateral treaties in the protection of national minorities in Central and Eastern Europe: conference room paper prepared by Ms. Kinga Gál, European Centre for Minority Rights

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